

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

**THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 10th day of August, Two thousand and six.

PRESENT:

HON. RALPH K. WINTER,  
HON. CHESTER J. STRAUB,  
HON. ROBERT A. KATZMANN,  
*Circuit Judges.*

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Wei Kang Chen

*Petitioner,*

-v.-

No. 05-5800-ag  
NAC

Alberto R. Gonzales,

*Respondent.*

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FOR PETITIONER: William P. Joyce, Boston, Massachusetts.

FOR RESPONDENT: Paul I. Perez, United States Attorney; Tamra Phipps; Karin B. Hoppmann, Assistant United States Attorneys, Tampa, Florida.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the  
1 petition for review is DENIED.

2 Wei Kang Chen, through counsel, petitions for review of the September 2005 BIA order

1 affirming Immigration Judge (“IJ”) Joanna Miller Bukzspan’s decision denying his third motion  
2 to reopen deportation proceedings. In November 1996, the IJ had denied Chen’s initial motion to  
3 reopen after he had been ordered deported *in absentia* in November 1995. We assume the  
4 parties’ familiarity with the underlying facts and procedural history.

5 We are without jurisdiction to review the merits of the underlying deportation proceeding  
6 as Chen did not file a timely petition for review of that decision. *See Kaur v. BIA*, 413 F.3d 232,  
7 233 (2d Cir. 2005) (per curiam) (“It is well established that the filing of a motion to reopen does  
8 not toll the time for filing a petition for review of the BIA’s exclusion or deportation orders.”).  
9 Our review is, therefore, limited to whether the BIA exceeded its allowable discretion by  
10 dismissing Chen’s appeal of the IJ’s denial of his third motion to reopen. *See Twum v. INS*, 411  
11 F.3d 54, 58 (2d Cir. 2005). An abuse of discretion may be found where the BIA’s decision  
12 “provides no rational explanation, inexplicably departs from established policies, is devoid of  
13 any reasoning, or contains only summary or conclusory statements; that is to say, where the  
14 Board has acted in an arbitrary or capricious manner.” *Ke Zhen Zhao v. U.S. Dep’t of Justice*,  
15 265 F.3d 83, 93 (2d Cir. 2001) (internal citations omitted).

16 Here, the BIA did not abuse its discretion in dismissing Chen’s appeal. Chen’s  
17 contention that the IJ erroneously denied his third motion to reopen due to numerical limitations  
18 fails because that motion was barred under 8 C.F.R. 1003.2(c)(2) (“A party may file only one  
19 motion to reopen deportation or exclusion proceedings . . .”).

20 To the extent that the BIA chose not to exercise its discretion to reopen proceedings *sua*  
21 *sponte*, review of that decision is beyond the Court’s jurisdiction. *See Ali v. Gonzales*, 448 F.3d  
22 515 (2d Cir. 2006) (holding that we lack jurisdiction to review a decision of the BIA as to

1 whether to reopen an alien's immigration proceedings *sua sponte* under 8 C.F.R. § 1003.2(a)).

2 Lastly, because Chen fails to raise his claim for cancellation of removal in his petition, any

3 challenge to the BIA's resolution of this issue is deemed waived. *See Yueqing Zhang v.*

4 *Gonzales*, 426 F.3d 540, 546 n.7 (2d Cir. 2005) (emphasizing that, "[i]ssues not sufficiently

5 argued in the briefs are considered waived and normally will not be addressed on appeal").

6 For the foregoing reasons, the petition for review is DENIED. The pending motion for a  
7 stay of removal in this petition is DENIED as moot.

8  
9 FOR THE COURT:

10 Roseann B. MacKechnie, Clerk

11 By: \_\_\_\_\_  
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